

National Institute of Standards and Technology

RECEIPT OF PROPRIETARY INFORMATION BY NIST

THIS NONDISCLOSURE AGREEMENT is entered into as of _____ by the _____ which is the party disclosing proprietary information ("DISCLOSER"), and the National Institute of Standards and Technology, which is the party receiving proprietary information ("NIST"), in order to protect the proprietary information which is disclosed to NIST. The information to be disclosed is described as follows: (provide a brief non-proprietary description)

The Parties to this Agreement hereby agree as follows:

1. NIST's representatives for receiving proprietary information are: _____, _____, and _____; NIST shall not disclose the proprietary information to any of its employees other than those who have a need to review it and which employees are legally obligated to honor the confidentiality provisions herein.
2. NIST shall keep the information confidential and shall use the proprietary information only for private experimental purposes or evaluation of the proprietary information. NIST shall not make any copies of the proprietary information except as necessary for its employees who are entitled to review it under Section 1 above. Any copies which are made shall be identified as belonging to Discloser and marked "confidential".
3. To the extent permitted by law, NIST shall protect the disclosed proprietary information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the proprietary information as NIST uses to protect its own confidential information of a like nature.
4. *NIST shall only have a duty to protect proprietary information which is disclosed to it in writing and identified as "proprietary" by Discloser, or, if disclosed orally or in any other manner, if Discloser provides NIST with a written memorandum summarizing and designating such information as "proprietary" within thirty (30) days of the disclosure.*
5. This agreement controls only information which is disclosed to NIST between the effective date and _____.
_____.
6. NIST's duties under Paragraphs 2 and 3 of the Agreement shall expire three (3) years after the information is received.
7. This Agreement imposes no obligation upon NIST with respect to information which (a) was in NIST's possession before receipt from Discloser; (b) is or becomes a matter of public knowledge through no fault of NIST; (c) is received by NIST from a third party without a duty of confidentiality; (d) is disclosed by Discloser to a third party without a duty of confidentiality on the third party; (e) is disclosed by NIST with Discloser's prior written approval and (f) is developed by NIST without reference to information disclosed hereunder.

8. Discloser warrants that it has the right to make the disclosures under this Agreement.
9. Neither party acquires any intellectual property rights under this Agreement.
10. Neither party has an obligation under this Agreement to purchase, sell or license any service or item from the other party.
11. The parties do not intend that any agency or partnership relationship be created between them by this Agreement.
12. All additions or modifications to this Agreement must be in writing and signed by both parties.
13. This Agreement is made under and shall be governed by the laws of the United States.
14. This Agreement may be terminated immediately by either party upon delivery of written notice of termination to the other party. Such termination shall not affect NIST's duties with respect to proprietary information disclosed prior to termination.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

NIST Recipients' Signatures _____, _____

_____, _____, _____

**National Institute of Standards
and Technology**

(Please Specify Company)

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: Laboratory Director

Title: _____

Address: NIST
Building _____, Room _____

Address: _____

By: _____

Print Name: _____

Title: Division Chief

Address: NIST
Building _____, Room _____

ATTENTION TO ALL NIST PERSONNEL: This Nondisclosure Agreement Should be Executed in Duplicate. Please forward a Copy of the Executed Nondisclosure Agreement to the Office of the NIST Counsel, Administration Building, Stop 1003, Room A524, Gaithersburg, MD 20899.

"Due Diligence" Questions for Disclosure of Information to NIST

The following information is to be provided to your Laboratory Director in a cover memorandum when the Laboratory Director is asked to review and sign a Non-disclosure Agreement for the receipt by NIST of proprietary information from an external organization:

1. The name of the organization disclosing the proprietary information to NIST:

2. A description of the subject matter to be disclosed along with an explanation of why the owner of the information wishes to disclose it to NIST. Also, describe why it is in the best interest of NIST to receive the proprietary information:

3. The impact or consequences if NIST decides not to receive the proprietary information:

4. Is the proprietary information related to a CRADA?

5. Does the proprietary information relate to any NIST-owned invention that has not yet been disclosed or a NIST-owned invention that has been disclosed but not yet filed with the U.S. Patent and Trademark Office?

6. The name(s) of the NIST recipient(s):

7. The proposed date of the requested disclosure:

8. Will the standard NIST Non-disclosure Agreement or one provided by the Discloser be used?

If the latter, also provide written clearance from the NIST Counsel.
For further information contact...
The Office of the NIST Counsel
301-975-2803